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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

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Christian **JAEGER** and Jutta **PAULI**

Confirmation No.: **4078**

Application No.: **10/689,221**

Examiner: **Ernst V. ARNOLD**

Filed: **October 20, 2003**

Group Art Unit: **1616**

For: **POWDER MIXTURE FOR RESORBABLE CALCIUMPHOSPHATE BIOCEMENTS**

Attorney Docket No.: **3975.025**

Customer Number: **000041288**

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This election is responsive to the Restriction Requirement dated September 28, 2005, the period for response extended from October 28, 2005, to December 28, 2005 by a Petition for Two Months Extension of Time and payment of fee filed herewith, wherein the Examiner requires Applicants to elect for prosecution from either:

Group I Claims 1-13, drawn to a powder mixture for resorbable calcium phosphate biocements, classified in class 556, subclass 308.

Group II: Claims 14-20, drawn to a method for manufacturing resorbable calcium phosphate biocements, classified in class 423, subclass 308.

Group III: Claim 21, drawn to a biodegradable implant, classified in class 424, subclass 423.

In response, Applicants elect Group I, with traverse.

Position of Examiner

The statement of the Examiner that the calcium phosphate biocement can be made by mixing hydroxyapatite (HA) with CaHPO_4 , wetting and milling does not apply to the present process.

HA is not mentioned under the crystal phases of part b) of Claim 1, neither within the main crystal phases $\text{Ca}_2\text{KNa}(\text{PO}_4)_2$, $\text{Ca}_{10}\text{Na}(\text{PO}_4)_7$, $\text{Ca}_{10}\text{K}(\text{PO}_4)$, nor within the secondary crystal phases, because the object of the invention is a powder mixture for resorbable calcium phosphate biocement. As is well known, HA is insoluble in water, only soluble in acids. Accordingly, 97% of the dental enamel is made from HA (see page from the enclosed Wikipedia Encyclopedia). It would be contrary to the object of the invention to include more than subordinate amounts HA in the biocement theoretically.

Further a most important part of diphosphates such as $\text{Na}_2\text{CaP}_2\text{O}_7$, $\text{K}_2\text{CaP}_2\text{O}_7$, $\text{Ca}_2\text{P}_2\text{O}_7$ is a part of the powder mixture and of the biocement. It seems impossible to use a powder mixture for a biocement of the invention with diphosphates according to the process mentioned by the Examiner.

On the other hand, the inventive process can only be used

to produce the product of the invention and no other products.

The invention of Groups II and III are also not distinct from the same reasons as above. The process described by the Examiner is different from the inventive process because in the invention

- at first there is a melting process of the mixtures of raw materials,
- then the melted product is milled to the described different grain fractions,
- after that, the different grain fractions are mixed with water and hardened to an implant.

This process can only be used to make this specific material. On the other side, this product can only be made by this specific process.

Besides, Applicants refer to 37 CFR 1475. Accordingly, an international or national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to e.g. a product and a process especially adapted for the manufacture of said product. Also in MPEP 802.01, the meaning of "independent" and "Distinct" 5th paragraph is said as "proper dependent inventions" e.g. the process and the product made by such product, also part II "Distinct" 1st paragraph mentions "process and product made" as related inventions.

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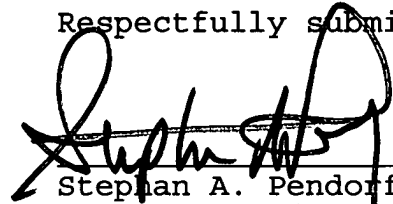
Attorney Docket No.: 3975.025

Accordingly, reconsideration and withdrawal of the
Restriction Requirement is respectfully requested.



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Respectfully submitted,


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Date: December 28, 2005

CERTIFICATION OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that a copy of the foregoing RESPONSE TO RESTRICTION REQUIREMENT for U.S. Application No.: 10/689,221 filed October 20, 2003, was deposited in first class U.S. mail, with sufficient postage, addressed to: Mail Stop Amendment, Commissioner for Patents; P.O. Box 1450; Alexandria, VA 22313-1450, on December 28, 2005.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.


Stephan A. Pendorf